

Amendments to the Drawings:

The attached sheets of drawings include changes to Figs. 1, 6, 8, 10, 11 and 14.
These sheets replace the original sheets including Figs. 1, 6, 8, 10, 11 and 14.

REMARKS

In response to the Office Action, claims 1, 2, 4 and 8-10 have been amended. The drawings and specification have also been amended. Accordingly, claims 1-10 are currently pending.

The drawings have been objected to because like numerals have been used to designate different elements. Applicant has carefully reviewed the drawings and has corrected these and other minor informalities in Figs. 1, 6, 8, 10, 11 and 14. New drawing figures 1, 6, 8, 10, 11 and 14 with changes shown in “annotated” sheets have been submitted for the Examiner’s consideration. Also, substitute/replacement sheets of Figs. 1, 6, 8, 10, 11 and 14 with said changes are also enclosed

The specification has been objected to because of minor informalities. The specification has been amended to correct element numerals in the drawings. Applicant has also amended the specification on pages 7 and 9 to include language that was inadvertently omitted in the Substitute Specification filed on April 24, 2006. Applicant respectfully submits that no new matter has been added as this language was present in the disclosure as originally filed. It is respectfully submitted that Applicant’s amendments to the specification fully address the Examiner’s objections.

Claims 1-8 have been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement.

Claim 1 has been amended to recite “a first portion including inner and outer parts; and a second portion, *the outer part being movable* relative to the inner part from a first position in which the outer part is immediately adjacent the second portion to a second position in which there is an unobstructed gap therebetween, the inner and outer parts ~~are~~ being adapted to become irreversibly locked in the second position so that the outer part cannot be moved back to the first position to close the gap.” (*Emphasis added*). Claim 1 as originally filed recited that the outer part is movable. However, in the Preliminary Amendment filed on April 24, 2006, the language “the outer part” was inadvertently deleted from the claim by previous counsel. As discussed above, claim 1 has now been amended to reintroduce this language. Accordingly, Applicant respectfully submits that the amendments to the claims fully address the Examiner’s objections.

Claims 1-8 have also been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. Applicant respectfully submits that the amendments to the claims fully address the Examiner's 112, second paragraph objections.

Claims 9 and 10 have been rejected under 35 U.S.C. 102(b) as being anticipated by British Patent No. 2158424 to Guala ("Guala").

Claim 9 has been amended to recite a combination container and tamper-evident closure, the combination including a first portion having an inner and outer part and a second portion. The second portion being connected to the container and the first portion being a removable top cap. The first portion outer part is movable relative to the inner part from a first position in which the outer part is immediately adjacent the second portion to a second position in which there is an empty, unobstructed gap therebetween. In the second position, the first portion is removable and the inner and outer parts are constructed and arranged to be irreversibly locked in the second position, so that the outer part cannot be moved back to the first position to close the gap when the first portion is replaced.

Guala does not disclose or suggest "a first portion outer part being movable relative to the inner part from a first position in which the outer part is immediately adjacent the second portion to a second position in which there is an empty, unobstructed gap therebetween."

This "unobstructed" gap according to the present invention is to prevent defeat of the tamper evidence by a simple cutting operation, as disclosed in the specification as originally filed. See, page 2, lines 16-18 of the Substitute Specification (page 3, lines 1-5 of the original disclosure). The gap therefore must be unobstructed by the locking mechanism in a way that prevents the locking mechanism from being removed by a simple cutting operation.

In contrast, as shown in Fig. 9 of Guala, the tamper-evident gap is clearly obstructed by locking mechanism 26, 35. In Guala's arrangement the locking mechanism projects into the gap and can be easily cut away by a counterfeiter using any suitable cutting tool. Thus, Guala does not cure the deficiencies of the cutting-vulnerable prior art.

Accordingly, as Guala does not disclose or suggest the claimed subject matter, claims 9 and 10 are allowable.

The undersigned notes that claims 1-8 have not been rejected under Sections 102 and/or 103 in view of Guala or any other prior art.

In view of the foregoing, it is submitted that the present application is in condition for allowance and a notice to that effect is respectfully requested. However, if any issue remains after considering this response, the Examiner is invited to call the undersigned to expedite the prosecution and work out any such issue by telephone.

Respectfully submitted,

/Corinne R. Gorski; Reg. No. 34,339/
Corinne R. Gorski
Registration No. 34,339

NIXON PEABODY LLP
401 9th Street, N.W., Suite 900
Washington, D.C. 20004-2128
(202) 585-8000
(202) 585-8080 (Fax)
Customer No. 22204

Dated: March 10, 2009